

¹ *Order Remanding Case*, Docket No. 13-1547 (issued December 2, 2013); Docket No. 14-1305 (issued January 13, 2015); *Order Denying Petition for Reconsideration*, Docket No. 14-1305 (issued July 6, 2015).

work, and appellant worked only part-time as of October 27, 1995. The correct pay rate was held to be the pay rate on April 23, 1993, the date of the first injury of \$376.19. Therefore, it found that an overpayment of \$11,630.61 had been created.

By decision dated January 13, 2015 the Board found that OWCP had not made sufficient findings to support the October 27, 1995 pay rate. It ordered OWCP to make a finding as to the proper pay rate on October 27, 1995 pursuant to 5 U.S.C. § 8114.² If the pay rate was indeed found to be less than \$376.19, then OWCP was instructed to make a finding that \$376.19 was the correct weekly pay rate, and reissue the overpayment decision to protect appellant's appeal rights.³

On April 18, 2016 OWCP issued a decision regarding appellant's pay rate. The April 18, 2016 OWCP decision does not make the directed findings as ordered by the Board in its January 13, 2015 decision. After reviewing the history of the case, OWCP found that appellant was working four hours per day on October 27, 1995 and the pay rate "would invariably be lower" than the established rate for the April 23, 1993 date of injury.

The Board concludes that OWCP failed to make the necessary inquiries and specific findings as to appellant's pay rate on October 27, 1995 as ordered in the January 13, 2015 decision and by prior orders. The Board specifically noted in its prior decision that "even though appellant was working four hours a day, it was not clear what her pay rate would be under the statute." It further noted that while "it may be that the pay rate was less" on October 27, 1995, "OWCP should still make a proper determination under 5 U.S.C. § 8114." OWCP was directed to "secure relevant evidence from the employing establishment to make proper findings" including "whether appellant worked substantially the whole year prior in the position, and if not whether the position would have afforded employment for substantially a whole year, or whether 8114(d)(3) should be applied to determine an amount that reasonably represents the earning capacity as of October 27, 1995. Such findings require more than a determination that appellant worked only 4 hours per day between October 10 and 27, 1995.

On remand OWCP should further develop the record as set forth above and thereafter: (1) determine, in step by step detail, the pay rate for the October 27, 1995 date of injury under 5 U.S.C. § 8114 making appropriate citation to the evidence considered; and (2) if it is less than \$376.19, make a finding that \$376.19 is the correct pay rate, and also (3) reissue the overpayment and schedule award decisions to protect appellant's appeal rights.

² The Board also noted the need to make proper findings as to the October 27, 1995 pay rate in Docket No. 11-1952 (issued September 10, 2012) and by *Order Remanding Case* in Docket No. 13-1597 (issued December 2, 2013).

³ The Board also noted that there was a November 16, 2012 schedule award decision that applied a pay rate of \$376.19, and OWCP should properly issue a decision regarding the schedule award pay rate to protect appellant's appeal rights on that issue.

IT IS HEREBY ORDERED THAT the decision of April 18, 2016 is set aside and the case remanded for further action consistent with this order of the Board.⁴

Issued: December 27, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

⁴ Colleen Duffy Kiko, Judge, participated in preparation of the order, but was no longer a member of the Board effective December 11, 2017.